

13480 PLM-I

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-196328

DATE: April 22, 1980

MATTER OF: Charles L. Jones [Administratively Uncontrollable  
Overtime]

DIGEST: U.S. Deputy Marshal, who received premium pay for administratively uncontrollable overtime (AUO) on an annual basis under 5 U.S.C. § 5545(c)(2), is not entitled to additional pay at the time and one-half rate for AUO. Premium pay for AUO is current pay for the pay periods when it was received, although the rate was based on AUO performed in a prior computation period. Also, premium pay for AUO is in lieu of all other forms of compensation for irregular or occasional overtime.

The issue is whether Charles L. Jones, U.S. Deputy Marshal, is entitled to pay at the time and one-half overtime rate for administratively uncontrollable overtime (AUO) for the final three pay periods before the U.S. Marshal's Service discontinued the authorization of premium pay for AUO on an annual basis pursuant to 5 U.S.C. § 5545(c)(2) (1976).

Mr. Jones performed AUO during the three pay periods between September 10 and October 21, 1978, the date on which the U.S. Marshals Service terminated the authorization of premium pay for AUO. He received premium pay for AUO during these pay periods based upon projected AUO hours performed during a computation period of 12 pay periods ending before September 10, 1978. A weekly average AUO computation for a 5-day week was calculated by totaling all of Mr. Jones' hours of irregular or occasional overtime during the computation period. During the period between September 10 and October 21, 1978, Mr. Jones received premium pay equal to a percentage of his basic pay based on the weekly average AUO during the "computation period". This method of payment for AUO was specified in Department of Justice Order (DOJ) 1551.4A, August 1, 1975, paragraphs 9 through 12.

Mr. Jones believes that because of a three pay period lag between the end of the computation period and the eligibility period that AUO performed during the three pay periods in question remains unpaid. However, the Assistant Attorney General for Administration states that premium pay for AUO is current pay although the rate was determined on the basis of overtime worked during a prior period of time (the

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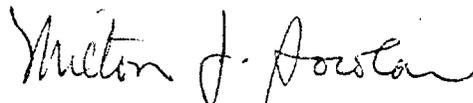
B-196328

computation period), and that all of the pay for AUO to which Mr. Jones was entitled was included in his pay checks for the three pay periods.

We agree that premium pay for AUO is current pay and that Mr. Jones received all of the premium pay AUO owed to him for the pay periods between September 10 and October 21, 1978. As the Assistant Attorney General for Administration points out, a new employee occupying a position for which premium AUO is authorized may receive such premium based on the AUO rate previously established for his predecessor in the position. See paragraph 10a of DOJ 1551.4A. In other words, even though the new employee does not perform AUO during the computation period establishing the rate, he is entitled to premium pay for AUO because he currently occupies the position. Conversely, except for certain specified periods when the employee temporarily leaves a position for which premium pay is authorized, entitlement to premium pay for AUO is dependent upon an employee occupying the position during the current pay period. See subparagraphs 12a and b of DOJ 1551.4A. In this connection we note that Mr. Jones alleges that his premium pay was not authorized immediately when he became a U.S. Deputy Marshal in 1966. However, it is irrelevant whether he received premium pay at that time since different regulations were in effect then.

We note that DOJ 1551.4A is consistent with the regulations of the Civil Service Commission (now Office of Personnel Management), which give to the heads of employing agencies authority to determine premium pay for AUO hours customarily worked in the position based upon past records, to fix appropriate premium pay rates, and to discontinue premium pay. 5 C.F.R. §§ 550.161 and .162. Further, an employee receiving premium pay for AUO may not receive premium pay at the time and one-half overtime rate since premium pay for AUO is in lieu of all other forms of premium compensation for irregular or occasional overtime work. 5 C.F.R. § 550.163(b); paragraph 12e of DOJ 1551.4A. See also Jacqueline Bailey, B-164689, March 26, 1976.

Accordingly, Mr. Jones is not entitled to additional pay at the time and one-half rate for AUO.



For the Comptroller General  
of the United States